

Affidavit for David Buzzell, Personal Friend and Business partner of Philip Smith.

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2006 JUN 21 P 2:5b

I David Buzzell do hereby swear that the following account of events and testimony is the truth, and that I am of sound mind and unbiased opinion to deliver this information.

In spring of 2005, I was unemployed and looking for both full-time and temporary work. I was doing computer consulting and was interested in getting more heavily involved in selling on eBay. My friend Philip Smith approached me with a possible project that we could get involved in that could potentially generate enough money to make it not only worth the time spent but also an amount of cash that we could parlay into some of the other projects that we had been working on. Some of these projects were stalled due to not having enough money to go forward with research, fabrication, and travel.

Philip interested me in selling the contents of a storage unit for a friend of his named Frank Watts. He had estimated the contents at being worth in the 30-40 thousand dollar range and projected that based on current selling values it would be worth 18 to 25 thousand if sold on eBay. We would split the money with Frank and use it to provide work/cash for me and investment capital for some of the projects Philip and I shared interest in. Philip estimated that it would take at least two or three months to organize, test, and sell the bulk of this computer related equipment locally and on eBay.

Because of his high level of interest and participation in eBay, I had mentioned to Philip that one of my consulting clients had done the corporate identification and advertising work for a new eBay drop off store called Bidzirk. Because of my relationship with my client and their enthusiasm for the new company I suggested that we might want to look into doing some collaboration or consulting with them. Certainly the two of us had a lot to offer to them in terms of experience and know-how and we both felt that they might be able to assist in some of our efforts with this project. Philip was very enthusiastic about this possibility and was 100% sold on making it happen.

We met with Ty Schmidt in the vicinity of May/June 2005 and showed him the warehouse contents, describing our plans to sell the equipment. During our conversation, we were very clear that we had lots of experience on eBay and were looking for a special relationship with a company like his. Such a relationship was to be deemed as "special" because of the unique services and knowledge that we could offer to him and his company and because we had large quantities of the same item. We were very clear that we were looking for a minimum of a 70/30 split altogether and were aiming for something even better if everything worked out as we hoped. It was our mutual understanding that once we had sold \$500 in merchandise that our rate would drop to 25%.

During our conversations at that time and largely for most conversations thereafter, Ty was very enthusiastic about our ideas and the concepts we outlined. He was positive

about virtually everything and we got the impression that he wanted this relationship to work out very much. There was very little hedging or negativism if any. This made me a bit uneasy because I have had experiences with personalities like this before and what has normally happened is a progressive reversal. At no time did he interject asides such as "Well, you know we charge this fee and that fee and this charge and that charge on top of the split so what you end up with is this other percentage." There was no clarification of this nature and when there was we made it very, very clear that we did not want to be dealt with in that manner. We were very clearly looking for a flat split and he knew that.

To be fair, Ty WAS very helpful in helping actually move out of the storage facility. He provided trucks and workers at his expense and was careful to try to keep track of inventory at this point. We were very impressed with his setup and many of his employees, so things were looking good at the outset.

I would like to also point out that it never seemed like our communications with Ty were being spread to the entire Bidzirk team. Often, Bidzirk employees (who did the majority of work) were unaware of any special considerations or requests we made.

Philip and I put quite a lot of work into emptying the contents of this warehouse into another warehouse in addition to helping Ty move the larger items. While we were not expecting to start getting checks immediately, we expected some cash flow to start coming in after a month, to maybe a month and a half. Having been very clear about what items were worth, we were very surprised to find that they were not selling or not selling for nearly what they should have, based on typical current eBay selling prices. We were also very surprised to find out later that some items were relisted multiple times before being sold, items we had not authorized to be anything but sold were donated or discarded, and many items that were not sold were charged as \$5.00 no-sales. Combined with the low prices these auctions were fetching, our return was dismally low. Topping that off was the quite nearly 50-50 split we were observing in monies due to the fees and so forth. We were nowhere near the 25/75 to 30/70 we had originally agreed upon, nor even the 44% that Bidzirk ambiguously places within its brochures.

It took a very long time to get paid for the items that did get sold and payment discrepancies took weeks to months to resolve. At no point during this period did Ty say to us that the reason the split was so low was that he never intended to honor our original agreement. We were strung along by excuses that were watered by our patience and attempts at being understanding. We wanted the relationship to work, so we put up with quite a lot. We felt taken advantage of.

When it finally came down to getting a meeting to get things back on track, we were not treated like valued customers at all but were told that this settlement was it, take it or leave it. All the promises and assurances given along the way were simply forgotten, as we had apparently become persona non grata at this point. I was more than horrified and insulted when the accountant pointed out a large mistake that had been made in the accounting and said simply "Oops" as an excuse. Ty and he were clearly ready for battle instead of negotiation because every time one of us said something that was remotely

negative they were ready to get up and walk out. After seeing that talking was going nowhere and we were done, Ty got up, pointed and jabbed his finger at Philip and dared him to seek legal options. His behavior was borderline alarming and had I not been at the meeting with Philip he would have had cause to be alarmed for his own safety. Ty was intentionally very threatening and intimidating. For being their largest and most loyal customers, we were treated very badly.

Personal observations regarding Philips state of mind during and after the experience are quite varied. In the beginning and middle of the collaboration he was very excited and positive about the relationship and the possibilities. I was actually surprised by his level of enthusiasm because he does not normally get excited about other businesses. Philip has high standards for doing business and in my experience with him I had not see him get more than moderately interested in another's business. I believe that he saw the tremendous potential that Bidzirk had and felt that he could make it happen if he hung in there long enough. I personally was a bit suspicious of the relationship due to my initial impression of Ty and the disappointing results, so it was a little off-putting that Philip was so enthusiastic about it. I had actually wanted to nip things in the bud in mid-summer when things just weren't improving but Philip was convinced they would get better. Philip is very smart, very experienced, and has a great deal of will power that he applies to things that he wants to happen and I normally would just trust his judgment despite my own misgivings. That turned out to be an error in this case and was particularly hurtful to me because I needed the money and potential in my own financial and business plans. Because of Bidzirk's low and late payment characteristics my relationship with Philip suffered because neither of us could afford to finance some of our equipment buys that we had planned and I at least subconsciously blamed him for Bidzirk's payment inequities. I had formerly felt very comfortable and casual handling money with Philip and had a great deal of trust in his ability to come through on a plan. While I hate to say it because he is a really good friend, I don't know if I will have that level of comfort and trust ever again. I think that the way this worked out has also affected his personal confidence in his ability to make things happen as well and because I depend on him a great deal in business and personal matters it affects me directly.

Another factor that is related to the above that needs to be pointed out is that Philip was positive to a fault about the potential of Bidzirk and their behavior. He made excuses for them to me and advised me that I needed to be less negative. This did not change until the very last meeting we had with Bidzirk. I don't recall working with someone who was so confident in a company before and who was so supportive of a company that was not his own. Even when we were having trouble, Philip purposely did not talk about our problems to other people because he was so sure that things would ultimately work out. His behavior and attitude toward Bidzirk did not really waver from this until that last meeting. Even after the meeting, he was holding out for the possibility that after seeing his article they would come to their senses and try to put things right.

Personal consequences to Philip have been significant throughout this ordeal. He put his reputation and other people's money on the line and was completely let down personally

and on behalf of his business partners by Bidzirk's conduct and failures. I have witnessed personal business friendships suffer because of this and in addition to personal business, some of his formal business relationships have been damaged. Knowing that someone is involved in litigation for any reason with any company never seems positive and because of inter-related contacts and the very public nature of Bidzirk's methods of doing business and this lawsuit there have been several individuals that have become aware of this whole situation. Philip was very vocal in promoting Bidzirk at the beginning and middle of this situation, often wearing their logo attire and recommending that people with older equipment use Bidzirk as a means of getting some value out of their older stuff. Because of this, people started asking about Bidzirk and it made for an uncomfortable situation for him not being able to recommend them anymore having so vehemently done so prior. Philip works out of The Computer Clinic and his being involved in a lawsuit made them leery of continuing that relationship lest they somehow became linked up with it.

There has even been a personal toll on Philip at his place of residence in that he lives in a condo complex and his neighbors get to say the legal boxes and envelopes and notices stacked up in front of his door on almost a daily basis. To say the least, that has to be humiliating having to tell people that you're being sued by a company; what with all of the mail it doesn't even need to be said. This has made for an uncomfortable neighbor situation to say the least. Psychologically and emotionally this had put a great deal of strain on Philip because even though he feels that he was within his rights in this situation he is fully aware that being right doesn't mean the court case will go your way and he could end up having to pay a large sum of money in damages. Even if he is found innocent of all charges he will have paid more money than he can reasonably afford in attorney fees, legal fees, and time spent away from work. I have personally witnessed Philip go through bouts of depression due to the stress that this lawsuit has put on him. The constant harassment from the attorney in addition to ramifications of the lawsuit have been a heavy burden to him.

Philip and I had often worked together in our consulting businesses and had been building toward doing several projects together. All of these projects involved a commitment of time and money in order to get them started and progressing. Because of the uncertainty of the lawsuits outcome and the monies that we have not received from the Bidzirk relationship our separate financial and work lives have been probably irrevocably altered. I had been holding off on finding full-time employment of any type because we were at the point where our various projects were starting to take off to the point where it was necessary to pursue them full time. We both anticipated sums of money from the immediate and ongoing Bidzirk relationship and instead experienced negative cash flow. Because of these outcomes, I have had to take a full-time job with Verizon Wireless and it is almost impossible to commit to any of our current projects so many of those are lapsing. One of Philips business partners has lost money in this venture to the extent that he is considering no longer offering assistance and financial backing to Philip. This particular individual is very important in Philips network and has funded various projects in the past and his nonparticipation is devastating. In short, our work and

financial plans for this year have been devastated by the events of last year and we may never recover.

David Suzuki

Carl G. Buzzell